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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. MATTHEW SCHUBERT, Defendant and Appellant.	B264627 (Los Angeles County Super. Ct. No. BA381544)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Richman, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A group of police officers went to arrest Matthew Schubert in the dormitory of a homeless shelter after Schubert made a threat to shoot a police officer. When the officers arrested Schubert, he resisted. After a trial at which Schubert represented himself, the jury convicted him of resisting arrest. We affirm the conviction over Schubert's arguments that substantial evidence does not support the verdict, the trial court committed evidentiary and instructional errors, and the trial court abused its discretion in revoking his right to represent himself after closing arguments and jury instructions.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Schubert Resists an Arrest*

Schubert has prior convictions for making a criminal threat and soliciting the murder of a police officer. While he was on parole after serving time in prison for one of his convictions, he met with a social worker and told her he was still experiencing anger about his arrest and conviction. He told the social worker he regretted not hitting the officer in the mouth and not shooting him, and if he ever saw the officer again he would assault him in public. The social worker reported the threat to law enforcement.

The police assembled a team of officers to arrest Schubert pursuant to a warrant for making the threat against the officer. At a briefing, the officers learned that Schubert had prior physical altercations with police and arrests for resisting arrest and soliciting murder of an officer. The officers were told that Schubert had threatened to punch and shoot a particular officer,

and that the police department and several individual officers had restraining orders against Schubert. The officers also learned that Schubert "was a dangerous individual that liked to fight and display violence towards the police." The team formulated a plan to arrest Schubert in a manner that would maximize both their safety and the safety of Schubert and that would allow them to take him into custody without anyone getting hurt.

The officers went to arrest Schubert in a homeless shelter in the skid row area of Los Angeles, where a security officer showed them the top bunk bed in which Schubert was sleeping. The fact that the shelter also housed a number of people who had been convicted of violent crimes and were on probation increased the risk of executing the arrest warrant for Schubert.

Two of the officers, Officer Richard Wollin and Officer Ryan Secor, approached the bunk bed, while the five or six other officers monitored the large dormitory room and kept watch in case any of the other people in the room intervened. Officer Wollin identified himself to Schubert as a police officer, said Schubert's name, and told Schubert he was under arrest. Officer Wollin asked Schubert "to sit up from his bed and place his hands on top of his head, and then come off the bed." In response, Schubert "sat up, he placed his hands in front of him in closed fists and stated, 'What the fuck?'" Schubert had "his hands in front of his face and fists protecting his body" in a "seated fighting stance" on the bed. To Officer Secor, "it appeared that he was going to jump off and start fighting us from above" and "engage us in violence immediately." The officers were concerned that Schubert could become aggressive towards them, as he had with other officers in the past.

Officer Wollin, with his hands around Schubert's torso, and Officer Secor, with his hands around Schubert's legs, pulled Schubert down from the top bunk bed and laid him on the floor, face down. Officer Secor was able to get Schubert's left hand behind his back to be handcuffed. Officer Wollin, however, was unable to secure Schubert's right arm because Schubert had tucked it "under his stomach area where his waistband is," which presented an additional safety risk for the officers because suspects commonly have weapons in their waistband areas, and Schubert "appeared to be reaching for something in his waistband." Officer Secor asked Schubert several times to remove his right hand from under his body, but Schubert refused. Officer Secor "told him to give us his [right] hand so he could be handcuffed and arrested, and that he should just relax and go along with the program." Schubert tightened his body and refused to comply.

Officer Secor struck Schubert in the face with "the meaty portion of [his] hand instead of the knuckles" and again asked Schubert to remove his hand from under his body and to stop resisting, which Schubert refused to do. Officer Secor then struck Schubert in the face a second time and again asked him to stop resisting, which Schubert still refused to do. Officer Secor repeated, "Just give me your hand." Finally, after Officer Secor hit Schubert a third time, Schubert said, "Okay, Okay," relaxed his body, and removed his right hand from under his body.

Meanwhile, one of the officers watching the other people in the room, Officer Kyle Rice, heard the struggle and heard one of the officers yelling at Schubert to stop resisting. Officer Rice came to assist and tried to get control of Schubert's feet, which were "flailing in the air" (according to Officer Rice) and "kicking

around" (according to Schubert). As Officer Rice attempted to control Schubert's feet, Schubert came within inches of kicking him in the face. After Officer Rice gave Schubert verbal commands to comply, he struck Schubert twice in the torso with his closed fist, at which point Schubert immediately ceased kicking his legs.

The officers were able to handcuff Schubert and escort him out of the dormitory, as Schubert said he was going to sue the officers. Even as the officers were walking away with Schubert, he kept trying to free his arms. Schubert suffered injuries from Officer Secor's strikes and from being pinned on the floor. Schubert did not have a weapon in his waistband.

Schubert testified at trial. He admitted he resisted the arrest, but explained he did so because he "didn't feel safe going with the police officers because of the way they acted." He testified that he resisted to protect himself. Schubert makes the same argument on appeal.

B. *The Jury Convicts Schubert of Resisting Arrest*

The People charged Schubert with one count of unlawfully attempting by means of a threat or violence to deter or prevent executive officers from performing their duties, and knowingly resisting by the use of force or violence executive officers in the performance of their duties. (Pen. Code, § 69.)[1] The People also alleged that Schubert had suffered a prior serious or violent felony conviction within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12) and had served a prior prison

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1 Undesignated statutory references are to the Penal Code.

term for a felony within the meaning of section 667.5, subdivision (b).

The jury found Schubert guilty. Schubert waived his right to a jury trial on the prior conviction and prior prison term allegations and admitted them. The trial court denied Schubert's motion to strike the prior serious or violent felony conviction and sentenced Schubert to a prison term of four years (the middle term of two years, doubled under the three strikes law). The court also imposed various fines and assessments.

DISCUSSION

A. *There Was Substantial Evidence To Support Schubert's Conviction for Resisting Arrest*

"When the sufficiency of the evidence to support a conviction is challenged on appeal, we review the entire record in the light most favorable to the judgment to determine whether it contains evidence that is reasonable, credible, and of solid value from which a trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] Our review must presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence." (*People v. Zaragoza* (2016) 1 Cal.5th 21, 44.) "'"Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]" [Citation.] A reversal for insufficient evidence "is unwarranted unless it appears 'that

upon no hypothesis whatever is there sufficient substantial evidence to support'" the jury's verdict.'" (*People v. Manibusan* (2013) 58 Cal.4th 40, 87; accord, *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) "[T]he relevant inquiry on appeal is whether, in light of all the evidence, '*any* reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.'" (*Zaragoza*, at p. 44.)

Section 69 provides, in relevant part: "Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine . . . or by imprisonment . . . or by both such fine and imprisonment."[2] The statute "'sets forth two separate ways in which an offense can be committed. The first is attempting by threats or violence to deter or prevent an officer from performing a duty imposed by law; the second is resisting by force or violence an officer in the performance of his or her duty.'" (*People v. Smith* (2013) 57 Cal.4th 232, 240; see *People v. Bernal* (2013) 222 Cal.App.4th 512, 517-518 [for the second type of violation, "[o]ther than forceful resistance, the terms of the statute do not require that a defendant use any other manner of force or violence on the person of the executive officer"].) "'The two ways of violating section 69 have been called "attempting to deter" and "actually resisting an officer."'" (*People v. Rasmussen* (2010) 189 Cal.App.4th 1411, 1418.) The former is a specific intent crime; the latter is a general intent crime. (*Id.* at pp. 1419-

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[2] "Police officers are 'executive officers' under section 69." *(People v. Carrasco* (2008) 163 Cal.App.4th 978, 984, fn. 2.)

1421.) At trial, the prosecution proceeded, and the court instructed the jury, on the theory that Schubert committed the second type of resisting arrest: resisting by force or violence.

Schubert contends that there was no substantial evidence to support his conviction because he did not knowingly resist by force or violence. Schubert argues that "his 20 to 25 second brief encounter with the police after police officers walked into his room while he was sleeping in his bed does not rise to knowing force [*sic*] against an officer as anticipated by the second prong of section 69." Schubert argues that the evidence showed he "was not resisting arrest," but rather he was "scared and confused" because "the police surprised him in his sleep" and he was only "protecting his brain, body, and face from injury" while he was "communicating his fears to the . . . police."

That is one possible interpretation of the evidence. But it is not the only one. (See *People v. Castaneda* (2011) 51 Cal.4th 1292, 1325 ["defendant's alternative inferences do not render insufficient the substantial evidence of his commission" of the crime]; *People v. Zaun* (2016) 245 Cal.App.4th 1171, 1174 [substantial evidence supported conviction for burglary where the defendant's inference from the evidence "was not the only reasonable conclusion available to the jury"]; *People v. Hamilton* (1995) 40 Cal.App.4th 1137, 1144 [substantial evidence supported conviction for robbery where the defendant's version was "not the only reasonable interpretation of the evidence"].)

There was evidence that Schubert knowingly resisted the officers by force or violence. Schubert was awake and his eyes were open when the officers approached him and before they spoke. When he saw the officers and heard them call his name and announce they were there to arrest him, Schubert, who

admitted he began resisting as soon as he saw the officers, sat up, put his closed fists in front of his face, and assumed a fighting position above the officers. After the officers placed Schubert on the ground face-down, he forcefully resisted their attempts to handcuff him and take him into custody by tensing his body and moving his right hand under his torso to an area where the police could have concluded he had a weapon. As he continued to resist, he nearly kicked one of the officers in the face. Substantial evidence supports the jury's verdict. (See *People v. Carrasco* (2008) 163 Cal.App.4th 978, 985-986 [defendant resisted arrest with force or violence where the officers had to take him to the ground because he "refused to comply with . . . repeated orders to remove his hand from his duffle bag," failed to comply with repeated orders to relax and "stop resisting," and "placed his hands and arms underneath his body" while kicking].)

Schubert also asserts that he did not resist a lawful arrest because he was "defending himself from serious injury from the use of excessive force from the police officers." (See *People v. Castain* (1981) 122 Cal.App.3d 138, 145 ["an officer who uses excessive force in making an arrest is not engaged in the performance of his duties"]; *People v. Olguin* (1981) 119 Cal.App.3d 39, 44 ["excessive force by a police officer renders unlawful an otherwise lawful arrest in that excessive force is not within the performance of the officer's duty"].) The trial court properly instructed the jury pursuant to CALCRIM No. 2652, an instruction Schubert does not challenge, that the People had to prove that the officers were performing their lawful duty and that "[a] police officer is not lawfully performing his or her duties if he or she is . . . using unreasonable or excessive force in his or her duties." Two of the officers, Officers Secor and Rice, used force to

arrest Schubert. They testified their use of force was reasonable and necessary; Schubert testified to the contrary. There was substantial evidence for both versions, and the jury believed the officers' testimony. (See *People v. White* (1980) 101 Cal.App.3d 161, 168 [whether officers used excessive force is a question for the jury].) There is no basis for interfering with the jury's verdict. (See *People v. Manibusan*, *supra*, 58 Cal.4th at p. 87 ["'[w]here the circumstances reasonably justify the trier of fact's findings, a reviewing court's conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment's reversal'"]; *People v. Jones* (2013) 57 Cal.4th 899, 963 ["'[i]f the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder'"]; *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324 ["[w]here there is substantial evidence to support the verdict, reversal is not warranted because the circumstances might also be reasonably reconciled with a contrary finding"].)

B. *The Trial Court's Exclusion of a Hearsay Medical Report Was Not an Abuse of Discretion and Did Not Deny Schubert a Fair Trial*

During Schubert's cross-examination of Officer Wollin, Schubert sought to introduce a medical report stating he had suffered a concussion. Schubert stated the report was from the emergency room of the Los Angeles County Sheriff's Department. The trial court sustained the prosecutor's hearsay objection. Schubert argues that he "intended to introduce the medical record showing that he suffered a concussion during the arrest to prove the officers used excessive force and that the arrest was

unlawful." Schubert contends that the trial court's exclusion of the document violated his rights to present a complete defense and a fair trial.

Schubert does not dispute the medical record was hearsay, nor does he argue the trial court abused its discretion in sustaining the prosecutor's objection. Schubert sought to introduce the document to prove the truth of what it asserted (i.e., that he had a concussion) and he did not argue that any of the exceptions to the hearsay rule applied. (See *Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 742 ["hospital and medical records are hearsay"].) Instead, Schubert argues that the trial court violated his constitutional rights "to due process and a fair trial" because, "even though the trial court did not have a duty to inform [Schubert] how to introduce the medical record of his head concussion," the court "at a minimum should have referred [Schubert] to confer with standby counsel who was in the courtroom."

Schubert provides no authority for his assertion that the trial court had a sua sponte duty to direct Schubert to consult with standby counsel, advise him how to introduce exhibits into evidence, or to teach him the rules of evidence. Indeed, absent substituting in standby counsel to represent Schubert, the court could not have ordered or recommended that Schubert consult with standby counsel and seek advice on how to comply with the rules of evidence. (See *People v. Williams* (2013) 58 Cal.4th 197, 255 ["'standby counsel . . . *takes no active role in the defense*, but attends the proceedings so as to be familiar with the case in the event that the defendant gives up or loses his or her right to self-representation'"]; *People v. Kurbegovic* (1982) 138 Cal.App.3d 731, 757 ["the term 'standby' counsel generally relates to an

attorney's being present to step in and represent an individual no longer able to represent himself"]; *Chaleff v. Superior Court* (1977) 69 Cal.App.3d 721, 731, fn. 6 (conc. opn. of Hanson, J.) ["'standby counsel' . . . mean[s] an attorney who is present in the courtroom and follows the evidence and proceedings but does not give legal advice to the defendant"].)

Nor, contrary to Schubert's suggestion, did the trial court "discourage" Schubert from presenting his case or consulting with standby counsel. The transcript reveals the following exchange:

"The Court: Mr. Schubert, this is an out-of-court statement being offered for the truth of the matter asserted that you have had a concussion. And the fact that you had the concussion may or may not show that there was excessive force. I am sustaining the hearsay objection without further foundation being laid. Is there anything else we need to talk about on this particular topic?

". . . .

"Mr. Schubert: Yes, there is, your honor.

"The Court: Okay. What else?

"Mr. Schubert: I feel that it's reasonable for the jury to be able to make a fair decision to have all the evidence."

"The Court: Well, I would agree with you. And if you were a lawyer, you might know how to present this evidence to a jury. This document here today in the way that you are choosing to do it is not the way it's going to happen."

"Mr. Schubert: Are you saying that I'm not mentally competent to represent this case, your honor?

"The Court: No. You are not following the laws of evidence. I am sustaining a hearsay objection. Okay? That's . . . the simple answer. If you were a lawyer, perhaps you

would know a way to present this evidence. But this document is not the way. It has nothing to do with your mental health and your ability to represent yourself. It is the problem of being a layperson trying to pretend that he's a lawyer and not knowing the appropriate rules of evidence.

"Mr. Schubert: I'm just trying to put on a defense, your honor, and present as much evidence as I can to build a case.

"The Court: I understand. But you still need to follow the Evidence Code. That's the law. The same as you want the officers to follow the law.

"Mr. Schubert: Well, I'm not sure how to present that, your honor.

"The Court: I can't give you legal advice. . . . The objection is sustained.

"Mr. Schubert: Do you want me to revoke my pro per status in order to be able to do that?

"The Court: I -- if that is a decision that you want to make. I do not know at this point in time whether this point can be presented by [standby counsel], who is standing by. This may be so late in the game that it cannot be cured, as I warned you from the beginning.

"Mr. Schubert: All right, your honor. We will continue on, and I'll just find a way to address that denial of evidence in the future."

The trial court handled the situation exactly right. The trial court stated its reasons sustaining the hearsay objection, explained that the court could not give Schubert legal advice, and respected Schubert's decision to exercise his constitutional right to represent himself. In making its evidentiary ruling, the court made sure that Schubert had a full and fair opportunity to be

heard and allowed Schubert to present his case consistent with the law. (See Cal. Code Jud. Ethics, canon 3(B)(7) ["[a] judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law"].)

Schubert also asserts that "[a]uthentication of a hospital record is a fairly simple procedure that could have been easily done if [he] had the opportunity to consult with standby counsel," and "authentication and admission pursuant to Evidence Code section 1271" is easy. Not always. In order for the court to admit the document under Evidence Code section 1271, Schubert would have had to call a custodian of records or other qualified witness from the emergency room or other medical provider to testify about whether the records were made in the ordinary course of business, whether the records were created at or near the acts, events, or conditions they described, what the documents were or how they were prepared, and the records' sources of information and method and time of preparation. (Evid. Code, § 1271; *People v. Zavala* (2013) 216 Cal.App.4th 242, 246; see *People v. Landau* (2016) 246 Cal.App.4th 850, 877 [the requirements of Evidence Code section 1271 "provide some assurance as to the reliability of the records"]; *People v. Dean* (2009) 174 Cal.App.4th 186, 197, fn. 5 ["[a] foundation of this nature ensures that the entries are made by personal knowledge, not on secondhand information days following the act, condition or event"].) The witness also would have had to explain the medical abbreviations contained in the report. There is no indication in the record that Schubert or his standby counsel could have called such a witness to testify about the Evidence Code section 1271 requirements.

Finally, to the extent Schubert is arguing that the trial court violated his constitutional right "to present a complete defense" and failed to ensure his "rights to a fair trial [were] protected fully," the exclusion of the hearsay evidence did not violate those rights. (See *People v. Blacksher* (2011) 52 Cal.4th 769, 821 [rejecting the "defendant's contention that, despite the rules of evidence, the federal constitutional right to present a defense prevails over state evidentiary rules"]; *People v. McNeal* (2009) 46 Cal.4th 1183, 1203 ["'[a]s a general matter, the "[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant's right to present a defense"'"].) In addition, the court did not foreclose admission of evidence that Schubert suffered a concussion. The court agreed with Schubert that evidence of a concussion could be relevant to the issue of excessive force and that the jury should have all relevant admissible evidence before making its decision. The court ruled only that Schubert had to comply with the rules of evidence in seeking to admit the medical record.

C. *The Trial Court Did Not Abuse Its Discretion in Revoking Schubert's Right To Represent Himself*

After the prosecutor and Schubert had presented their closing arguments, the court had instructed the jury, and the jury had retired to deliberate on its verdict, Schubert told the court that he had a complaint against several of the deputy sheriffs, one of whom Schubert said was "very passively aggressive" and intimidating. Schubert stated, "I'm concerned that they -- this may have prevented me from having a fair case since yesterday afternoon." The court then asked for a copy of all video recordings of the deputy's contact with Schubert, and received it

into evidence as a trial exhibit. Schubert and the court then engaged in the following exchange:

"Mr. Schubert: Your honor, the fact that the bailiff that I'm talking about has not told me of any kind of concern or any kind of disrespect that I may have shown him, I have taken it as no disrespect has been shown to him, and that he was not . . . at all upset or angry about anything that I've done. So the fact that [the deputy sheriff] has refused to communicate my behaviors or any kind of inappropriate conduct that I may have had does not help me feel comfortable and should be taken into consideration when you review the video, sir.

"The Court: I'm not going to review the video. And I have no idea what you are saying, so you are now bordering on the standard that *Johnson* has addressed.[3] But I'm not going to relieve you of your pro per status at this point.

"Mr. Schubert: What I'm saying is if he would have communicated those issues to me or any issues that he may have had of me misbehaving or disrespecting him that may have caused him to . . . have been a little aggressive with me, then I would have known about it.

"The Court: Again, Mr. Schubert, you have expressed a concern with [the deputy] coming in contact with this jury. We have a videotape of all of your contacts with [the deputy].

"Mr. Schubert: I'm just taking things ahead of time.

"The Court: So it will be made as a record of this Court. We are in recess until we hear from the jury. Mr. Dibble [the

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3 The trial court was referring to *People v. Johnson* (2012) 53 Cal.4th 519, which discussed the trial court's discretion to deny self-representation to criminal defendants.

prosecutor], Mr. Schubert, take a look at the verdict form. If you have any . . . objection, bring it to my attention.

"Mr. Schubert: I do not want this to happen to anyone else, your honor. And pursuant to Penal Code 197, justifiable homicide that has been reported to the FBI by me, this will not happen to anybody else. Have a nice day. This court has been warned.

"The Court: All right. Are you threatening me at this time, Mr. Schubert?

"Mr. Schubert: Your honor, that is not a threat, your honor, that is the law. Penal Code 195, justifiable homicide, is the law.

"The Court: Are you threatening me at this point in time?

"Mr. Schubert: I told you no.

"The Court: All right. At this point in time, Mr. Schubert, your pro per status is revoked. You will be removed from the pro per module.

"Mr. Schubert: Have a nice day.

"The Court: You too."

Schubert argues that the trial court abused its discretion in revoking his right to represent himself and substituting in standby counsel at this point in the proceedings. Schubert contends that the trial court abused its discretion because the "record clearly shows that [Schubert] was not threatening the judge" and, even if his "statements could be construed as a threat," the court "did not have a basis for revoking [Schubert's] pro per status."

"On review, we accord 'due deference to the trial court's assessment of the defendant's motives and sincerity as well as the nature and context of his misconduct and its impact on the

integrity of the trial in determining whether termination of [self-representation] rights is necessary to maintain the fairness of the proceedings.' [Citation.] The court exercises considerable discretion in this regard and 'the exercise of that discretion "will not be disturbed in the absence of a strong showing of clear abuse."'" (*People v. Becerra* (2016) 63 Cal.4th 511, 518; accord, *People v. Carson* (2005) 35 Cal.4th 1, 12.) "[T]he right of self-representation is not absolute. '[The] government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer.' [Citation.] 'The right of self-representation is not a license to abuse the dignity of the courtroom.'" (*People v. Williams* (2013) 58 Cal.4th 197, 253.)

The trial court may terminate a defendant's self-represented status "for misconduct that seriously threatens the core integrity of the trial." (*People v. Carson*, *supra*, 35 Cal.4th at p. 6.) "When a defendant exploits or manipulates his in propria persona status to engage in such [threatening or intimidating] acts, wherever they may occur, the trial court does not abuse its discretion in determining he has forfeited the right of continued self-representation." (*Id.* at p. 9.) "A trial judge may terminate self-representation '[w]henever "deliberate dilatory or obstructive behavior" threatens to subvert "the core concept of a trial" [citation] or to compromise the court's ability to conduct a fair trial.'" (*People v. Espinoza* (2016) 1 Cal.5th 61, 77, fn. 4.) When determining whether to terminate a defendant's self-represented status, the trial court should consider the nature of the misconduct, its impact on the trial proceedings, the availability and suitability of other sanctions, whether the defendant was warned that particular misconduct would result in termination,

and whether the defendant intentionally sought to disrupt and delay the trial. (*Carson*, at p. 10.) The defendant's intent to disrupt the proceedings is not a "necessary condition," but it is relevant to the effect of the misconduct on the trial proceedings. (*Ibid.*)

The transcript of the hearing suggests that the trial court may have been a little quick in revoking Schubert's self-represented status. Schubert had given indications earlier in the trial that he would respect and comply with the court's rulings. And he twice denied that he was threatening the court. Nevertheless, "the extent of a defendant's disruptive behavior may not be fully evident from the cold record," and we "accord[] deference to the trial court [because] it is in the best position to judge defendant's demeanor." (*People v. Welch* (1999) 20 Cal.4th 701, 735; see *People v. Clark* (2011) 52 Cal.4th 856, 900 [trial court is in the best position to observe "demeanor, tone of voice, and other cues not readily apparent to the reviewing court"].) The trial court had ample opportunity to observe Schubert's behavior during the trial, was aware of his prior threats toward and attempts to kill peace officers, and was in the best position to determine whether Schubert's statement that he was warning the court about justifiable homicide was a legitimate threat to the court and the integrity of the proceedings. In addition, because the court found the threat was legitimate, it is unclear what a warning or other sanction would have accomplished in that situation. The trial court did not abuse its discretion in interpreting Schubert's words as a serious threat against a

judicial officer that went to the core concept of a trial and the integrity of the proceedings.[4]

D. *The Trial Court Properly Instructed the Jury on Reasonable Doubt*

The trial court instructed the jury pursuant to CALCRIM No. 220 that the presumption of innocence "requires that the People prove a defendant guilty beyond a reasonable doubt." The court also instructed the jury, "Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt." Schubert argues that the court erred by not also instructing the jury that the People had the burden of proving "'each element' of the offense or enhancement" beyond a reasonable doubt.

Every appellate court that has considered this argument has rejected it. Instructing the jury that whenever the court states that the People must prove something the People must prove it beyond a reasonable doubt adequately informs the jury that the People must prove each element of the offense beyond a reasonable doubt. (See *People v. Riley* (2010) 185 Cal.App.4th

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[4] Although Schubert notes he was not present in court with his attorney when the court subsequently answered a question from the jury, he does not argue that the court violated his constitutional or statutory rights to be present at the hearing. (See Cal. Const., art. I, § 15; §§ 977, 1043; *United States v. Gagnon* (1985) 470 U.S. 522, 526; *People v. Cunningham* (2015) 61 Cal.4th 609, 633; *People v. Blacksher* (2011) 52 Cal.4th 769, 798-799.) Schubert's brief includes a statement that he "had the right to be his attorney" when the jury sent the court the question, but he does not argue he had the right to be present with his attorney at that time.

754, 770; *People v. Henning* (2009) 178 Cal.App.4th 388, 406; *People v. Wyatt* (2008) 165 Cal.App.4th 1592, 1601; *People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088-1089.) We agree with those courts that the instructions as a whole correctly explained to the jury that the prosecution had to prove each element of the charged offense beyond a reasonable doubt.

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

ZELON, Acting P. J.

KEENY, J.*

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*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.